

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of

Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	

**COMMENTS OF FREE CONFERENCING CORPORATION ON FURTHER NOTICE OF  
PROPOSED RULEMAKING—SECTION XVII.L-R**

February 24, 2012

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## 1. Overview

FreeConferenceCall.com has previously filed comments and reply comments in the Notice of Proposed Rulemaking that produced the Order by the Commission on November 18, 2011.<sup>1</sup> In this document, FreeConferenceCall.com will present its views on the Further Notice of Proposed Rulemaking on the Order, with particular attention to Intercarrier Compensation (ICC) and related competitive issues.

The most important attribute of the Rulemaking on ICC is to achieve certainty. The Commission must provide a stable market for telecommunications consumers and the companies that serve them. At its core, this stability comes down to connectivity, just and reasonable rates, and payment for services rendered. Certainty is already in question due to the multiple appeals of the Order (which FreeConferenceCall.com is not party to), which will take years to resolve. The Commission, through direct action and this Further Rulemaking can at least clarify some outstanding issues.

Connectivity is simple: each and every voice provider (whether a carrier or VoIP) must connect its customer on each and every call. This is the fundamental precondition of a communications system, and it was reiterated recently in the Commission's Declaratory Ruling on call blocking.<sup>2</sup> The next step for this ruling is enforcement for every landline and wireless carrier, as well as every VoIP provider throughout the United States.

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<sup>1</sup> FreeConferenceCall.com Comments and Reply Comments to NPRM (4/1/11; 4/18/11; Further Inquiry Comments 8/24/11; 9/6/11)

<sup>2</sup> <http://www.fcc.gov/document/wcb-issues-declaratory-ruling-rural-call-completion-issues> (2/6/12)

Just and reasonable rates are another basic function to be overseen by the Commission. The Order attempts to address terminating access tariffs through the push for parity between intrastate rates and interstate rates, the reduction of tariffs for Access Stimulation, and the longer-term transition of all terminating access down to \$0 (Bill and Keep).

Payments have not been addressed, other than an admonishment against self-help and a reiteration of the deemed lawful principal.<sup>3</sup> A consistent rule on payment for deemed lawful tariffs with corresponding enforcement would not only strengthen the market, it would limit the number of federal court cases that are wasting taxpayer money on essentially regulatory matters. Again, as in any other economic transaction, market participants must pay for services that they have received. Unfortunately, many competitive carriers, and rural and smaller incumbent carriers, have been significantly damaged due to nonpayment. The Commission has spoken on rate structures through the Order; it is now time to ensure that proper payment is made for access.

## 2. Origination

As was stated previously, the fundamental purpose of an ICC regime is to ensure that calls can be completed from point to point. We asked, if consumers are not paying for origination, transport, and termination, what are they paying for? The Commission has set its benchmarks and a transition away from terminating access, and it hopes that that reduction in costs for the three largest carriers

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<sup>3</sup> ICC/USF Order, p 225, para. 695-700

controlling 90% of the landline customers and the two carriers controlling over 60% of the wireless customers will lead to corresponding investments in broadband. By keeping origination at the current levels, the Commission has allowed these dominant market players to truly bill and keep.

This market advantage can be addressed by reducing origination charges throughout the transition of terminating access charges. As we did not agree with the glide path to \$0 for termination, we do not agree that origination should be set at \$0. The Commission should calculate a nationwide cost average of providing a connection and transition all carriers to that rate by the end of the ICC transition. In this way, originating carriers can recoup some cost of service from their customer.

### 3. Transport and Tandem

The Order caps transport and tandem rates for rate of return (ROR) carriers and reduces rates price cap (PC) carriers when those carriers own the tandem. The Order did not address the transition for transport and tandem charges if the price cap carrier does not own the tandem in the serving area.

Once more, there is a cost to provide this service, and the Commission's push to lower rates or caps is reasonable if supported by market analysis. But a mandate to go to \$0 or below cost is not warranted. In the situations that were addressed in the Order, the same carrier owns both the transport and the tandem. When that is not the case, each provider should be compensated for the service they provide.

#### 4. Arbitrage Under Bill and Keep

We have seen definite incidents of high-volume spoofing from as yet unknown origin (either a carrier or a VoIP provider), which have been referred to the Enforcement Division at the Commission. In addition, our CLEC partners have notified us of traffic dumping by the wireless industry and we are working with them to compile the data. It is clear operating largely under bill and keep today does not dissuade some carriers from manipulating the marketplace.

In terms of the benefit to the consumer, it is clear that the bill and keep model does not produce savings on calls to cellphones compared to calls to landlines when there is no terminating access charged on those wireless calls. Those carriers simply pocket the difference. The Commission should not attribute virtue to the wireless marketplace simply due to the lack of terminating access.

While we are still analyzing the incidents mentioned above and will provide more detail in the Reply Comments to the Further Notice of Proposed Rulemaking, traffic dumping has basic indicators that are based on statistical anomalies. For instance, a specific tandem or loop will have one way VoIP traffic comprising over 20-30% of the total traffic at that location when VoIP only has about 6% of the total voice customers in the United States. Similarly, tremendous spikes in the amount of intraLATA traffic take place when the average is less than 15% for a given location. Congestion is taking place, and there is clear economic damage from such manipulations by carriers and/or providers.

## 5. SLC Levels

On behalf of consumers, FreeConferenceCall.com firmly believes that Subscriber Line Charges (SLC) should be reduced. Again, the Commission should undertake a market analysis and set a nationwide average. This average can be revisited every three to five years to reflected market and technological realities.

Consumers should be told what these charges are as part of any marketing for services. The Commission should always stand in support of consumers in the rates they pay and in the advertising that leads them to choose one provider over another. Carriers should always support truth in advertising and not be concerned of a level playing field for competition.

## 6. IP to IP Interconnection

Whether IP providers or carriers, mandated interconnection is necessary to maintain a fully integrated telecommunications system. The Commission should encompass all VoIP traffic, whether referred to as “packetized voice” traffic, “IP voice” traffic, or simply “VoIP” in its IP to IP Interconnection rules. A VoIP service needs to connect to the PSTN to provide voice service to consumers, and the Commission needs the broadest framework to ensure that this telecommunications service is provided.

As long as there are significant differences in market power, as there are with landline and wireless carriers, interconnection is a significant concern. IP to IP interconnection proffered on unreasonable rates, and under unreasonable terms and conditions can and will raise competitors’ costs. The Commission must provide

the balance in this equation so that the consumer can benefit from robust competition. Good faith negotiations for IP to IP interconnection are absolutely necessary for voice communications services.

Basic standards are needed to frame the negotiations: connectivity should not be denied, and pricing for similar services within the ranges set by the Commission are the benchmarks. Enforcement should be a regulatory function, best managed by the Commission and state regulators.

## 7. Tariffs and Agreements

Beyond connectivity, the Commission should not mandate how carriers and providers transact their business. Tariffs set a benchmark that is useful in determining the parameters of a business relationship. FreeConferenceCall.com and our competitors regularly mix tariffing with negotiated agreements to provide services to our customers.

The nature of the interaction between telecommunications providers will set the terms on which traffic is exchanged. The Commission believes interconnection agreements are most consistent with the Order, and those agreements are taking place when both parties see that it makes economic sense.

## 8. Conclusion

In our comments through the NPRM leading to the Order, we pointed out that the consumer gets lost in many of the discussions regarding intercarrier compensation. This remains a concern with the cost of SLCs, the call quality

resulting from Arbitrage Under Bill and Keep, and the competitive options of Interconnectivity.

In addition to the focus on the consumer, the most important attribute of the Rulemaking on ICC is to achieve certainty. Commissioner Copps' statement upon issuance of the NPRM decried excessive litigation, self-help and use of market power over ICC disputes. The Commission must create an environment for carriers to develop business plans, book revenue, and eliminate damaging disputes.

The Commission must provide a stable market for telecommunications consumers and the companies that serve them. Whether through connections, rates, or payments, the Commission must remain vigilant to provide a marketplace that can better serve the American consumer.